

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

Altria Group, Inc.
a corporation;

and

JUUL Labs, Inc.
a corporation.

Docket No. 9393

**COMPLAINT COUNSEL’S OPPOSITION TO RESPONDENT JUUL LABS, INC.
MOTION FOR *IN CAMERA* REVIEW OF CERTAIN TRIAL EXHIBITS**

Respondent Juul Labs, Inc. (“JLI” or “Respondent”)’s motion for *in camera* treatment is overbroad, claiming *in camera* treatment for a significant number of documents that fail to satisfy the high burden set forth in FTC Rule 3.45. Respondent fails to demonstrate that clear injury would result from the disclosure of the majority of these documents, and it instead merely relies on conclusory claims about competitive injury and attempts to shield numerous documents through overbroad requests for permanent *in camera* treatment. Providing *in camera* treatment to this broad array of evidence would undermine the clearly stated goals of the Commission to encourage public access to adjudicative proceedings. For the reasons set forth below, Complaint Counsel respectfully requests that the Court deny Respondent JLI’s motion for *in camera* review of 173 trial exhibits provided in Exhibit A.

LEGAL STANDARD

There is a strong presumption in favor of open access to Commission adjudicative proceedings. Ex. B, *In the Matter of Axon Enterprise, Inc.*, FTC Dkt. 9389, p.2 (Oct. 2, 2020);

In re Polypore Int'l, Inc., D-9327, 2009 FTC LEXIS 256, at *3 (April 27, 2009); *see also In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1186 (1961) (“To foreclose [FTC] hearings and the evidence adduced therein from the scrutiny of . . . interested persons would serve in large measure to defeat the very reason for our existence.”); *In re Impax Labs, Inc.*, D-9373, 2017 FTC LEXIS 121, at *2 (Oct. 16, 2017). Open proceedings permit the public to evaluate the “fairness of the Commission’s work,” and “provide guidance to persons affected by [the Commission’s] actions.” *In re Intel Corp.*, D-9288, 1999 FTC LEXIS 227, at *1 (Feb. 23, 1999) (citing *The Crown Cork & Seal Co.*, 71 F.T.C. 1714, 1714-15 (1961) and *H.P. Hood*, 58 F.T.C. at 1196).

Under Rule 3.45, Respondent must demonstrate that it will likely suffer “a clearly defined, serious injury” as a result of disclosure. 16 C.F.R. § 3.45(b). The standard for determining “a clearly defined, serious injury” is “based on the standard articulated in *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).” 16 C.F.R. § 3.45(b) (also citing *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977) and *General Foods Corp.*, 95 F.T.C. 352, 355 (1980)). *H.P. Hood* explained that *in camera* requests for ordinary business documents “should be looked upon with disfavor and only granted in exceptional circumstances upon a clear showing that an irreparable injury will result from disclosure.” *H.P. Hood*, 58 F.T.C. 1184, at *14. The Commission found that “the mere fact that respondent prefers to keep them confidential” is not evidence of injury. *H.P. Hood*, 58 F.T.C. 1184, at *13. The potential for embarrassment or the desire to protect business information that competitors may be “desirous to possess” are not sufficient bases for obscuring material from the public. *H.P. Hood*, 58 F.T.C. 1184, at *14. The motion must also be “narrowly tailored to request *in camera* treatment for only that information that is sufficiently secret and material.” *Polypore*, D-9327, 2009 FTC LEXIS 256, at *4.

ARGUMENT

“The burden rests on Respondent to demonstrate that the evidence sought to be withheld from the public record is sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury.” *In re ProMedica Health Sys.*, D-9346, 2011 FTC Lexis 70, at *5-6 (May 13, 2011). Respondent has not met its burden. Respondent’s motion fails to satisfy Rule 3.45, is overbroad, and makes conclusory claims about competitive injury. Respondent fails to show why public disclosure of stale information relating to Altria’s acquisition of 35% of JLI (“Transaction”), which was consummated years ago, and a services agreement that was part of the Transaction that has been almost entirely abandoned, could cause them competitive harm today. Respondent further brazenly seeks indefinite *in camera* protections for *entire documents* where only a tiny fraction of the document contains sensitive personal information. Respondent also fails to establish that documents more than three years old (created prior to May 14, 2018), which are presumptively not confidential, should nonetheless be omitted from the public record. Indeed, Respondent fails to meet its burden of demonstrating that it would suffer “a clearly defined, serious injury” as a result of disclosure, even as to documents that are less than 3 years old. As to those documents, Respondent is arguing against itself; Respondent argues that the competitive landscape is dynamic and has changed since the Transaction, less than three years ago. *See* Scheduling Conference Tr. at 23:6-14. If this were true then JLI could not be seriously injured by information that was relevant to the market in 2018, or even 2019.¹

¹ Respondent includes in its request approximately 100 documents dated between May 14, 2018 and May 14, 2019, and more than 65 documents from May 14, 2019 to May 14, 2020.

the disclosure of documents relating to the timeline of negotiations for the Transaction, which happened over two years ago, and conversations about { [REDACTED] } are likely to cause significant competitive injury to Respondent.

Respondent further requests *in camera* treatment for 37 documents relating to the “Altria Services” agreement the parties entered into as part of the Transaction. In its motion, Respondent claims costs associated with commercial services—such as distribution and warehousing services—are competitively sensitive. Mot. at 7. Respondent fails to acknowledge that all of its services agreements were terminated in January 2020, with the exception of regulatory services. Respondent has not shown that it would suffer serious injury from the disclosure of long-expired services agreements – if the documents relate to the services agreement at all. For example, Respondent improperly seeks confidentiality protections for “Altria Services” information for:

- Ex. G, PX2005, { [REDACTED] }
[REDACTED]
[REDACTED]
[REDACTED] }. This document pre-dates the Transaction by many months.
- Ex. H, RX1581, { [REDACTED] }
[REDACTED]
[REDACTED] } At the very least, this document should not be given full *in camera* treatment on the requested pages.

Respondent has not met the high burden of Rule 3.45 for this category of documents.

II. HISTORICAL DOCUMENTS DO NOT WARRANT *IN CAMERA* TREATMENT

Respondent included ten documents that are older than three years, all dated before May 14, 2018.² “[T]here is a presumption that *in camera* treatment will not be accorded to information that is more than three years old,” and to overcome that presumption, the movant must demonstrate “demonstrate, by affidavit or declaration, that such material remains competitively sensitive.” Ex. B, *In the Matter of Axon Enterprise, Inc.*, at p.2; *Impax Labs.*, D-9373, 2017 FTC LEXIS 121, at *3-4. Respondent has not explained why these older documents should qualify for an exception to the presumption, and its declaration supporting the motion is void of any explanation as to why documents prior to May 1, 2018 should receive *in camera* treatment.

Furthermore, as stated above, due to Respondent JLI’s argument about dynamic competition, there is ample grounds to deny *in camera* treatment to documents less than three years old. It is clear from even a brief review of these older documents that they no longer contain competitively sensitive information. For example, Respondent seeks *in camera* treatment for Ex. I, PX2486 { [REDACTED]

[REDACTED] } and for Ex. J, RX1598

[REDACTED]

[REDACTED]

[REDACTED]

² Respondent also includes eight un-dated documents. It is not obvious from the description of the document when these were created. Respondent bears the burden to prove *in camera* treatment is warranted, and therefore must provide sufficient information to the Court regarding the age of the documents. See *Impax Labs.*, D-9373, 2017 FTC LEXIS 121, at *1.

[REDACTED]

[REDACTED] } (-013). Respondent provides no explanation why documents relating to products that are no longer on the market – specifically Altria’s Nu Mark and MarkTen products – are competitively sensitive today when Altria stopped selling them in 2018 in order to enter the Transaction. If this information is old enough to compare products that haven’t been sold for years because of Altria’s acquisition of 35% ownership of JLI, it is difficult to discern how Respondent could face competitive injury from its public disclosure.

Among other things, Respondent seeks *in camera* treatment for stale financials and projections. For example, Respondent seeks *in camera* treatment for: Ex. K, PX2265 { [REDACTED] [REDACTED] [REDACTED]) and Ex. L, PX2127 { [REDACTED] }. Many of Respondent’s claims for *in camera* treatment relate to 2018 and 2019 strategy documents that do not appear to strategize beyond 2019 or where changes have occurred that make those strategies void. *E.g.*, Ex. M, RX1440 (sales and marketing); Ex. N, RX1583-007, -018 ({ [REDACTED] [REDACTED] [REDACTED] }).³

Respondent has not met its burden to show that this older information is currently competitively sensitive and likely to cause Respondent injury.

³ See January 2, 2020 Food and Drug Administration news release, “FDA finalizes enforcement policy on unauthorized flavored cartridge-based e-cigarettes that appeal to children, including fruit and mint” available at <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.

Respondent's arguments do not overcome the presumption that documents older than three years should not be afforded *in camera* treatment and their arguments about documents less than three years old are also unpersuasive.

III. REQUESTS FOR INDEFINITE *IN CAMERA* TREATMENT FOR "PERSONAL SENSITIVE INFORMATION" ("SPI") SHOULD BE DENIED

Respondent seeks permanent *in camera* treatment for 65 documents in their entirety that purportedly contain SPI under Rule 3.45(b).⁴ Respondent provides no explanation regarding the nature of the SPI in each of these documents. Upon review, phone numbers appear to be the basis for many of Respondent's SPI claims; however, a phone number on a document's page is not proper grounds to give *in camera* treatment to the entire page, much less the entire document.

For example, on { [REDACTED]

[REDACTED] } (Ex. P, PX2328); several days later, { [REDACTED]

[REDACTED]

[REDACTED] } (Ex. Q, PX2420). Respondent

claims confidentiality protections over a meeting invite with a conference call dial in for a meeting called { [REDACTED] } (Ex. R, PX2430), which is not personally sensitive.

Respondent seeks confidential treatment over text/SMS/iPhone messages and phone logs, which make up the vast majority of its SPI claims, when only the phone numbers should be afforded such treatment. Complaint Counsel requests limited confidentiality be afforded to only phone numbers and not entire documents. *See In re LabMD, Inc.*, 2014 FTC LEXIS 127, at *2 (May 6,

⁴ Respondent fails to identify what is personally sensitive about certain documents. *E.g.*, Ex. O, PX2433.

2014); *In re McWane, Inc.*, 2012 FTC LEXIS 156 (Sept. 17, 2012); *In re Basic Research, LLC*, 2006 FTC LEXIS 14, at *5-6 (Jan. 25, 2006) (ordering documents be redacted).

Moreover, Respondent broadly claims deposition transcripts contain SPI without identifying which quotes contain SPI, and many of the quotes identified clearly do not contain SPI. *E.g.*, Ex. S, RX0116 (extract) (also PX7027) at 73:22 ({ [REDACTED] [REDACTED] }), 79:6-11. Indefinite *in camera* protection is warranted only “in unusual circumstances,” as described in Rule 3.45(b)(3) and Respondent fails to specifically state the basis for each of its claims.

Respondent also improperly seeks SPI protection for form employment contracts that do not contain SPI. *E.g.*, Ex. T, PX2243 at -009-055, 60-96. In short, Respondent fails to carry its burden to establish indefinite *in camera* treatment is appropriate.

CONCLUSION

Respondent’s proposed list of documents for *in camera* treatment is overly broad and seeks to shield a significant volume of relevant evidence that is appropriate for disclosure. It is important to have this information on the public record to be a guide to practitioners and the business community. For the foregoing reasons, Complaint Counsel respectfully requests that the Court deny Respondent JLI’s Motion for *In Camera* review of certain trial exhibits provided in Exhibit A.

Dated: May 17, 2021

Respectfully submitted,

s/ Nicole Lindquist

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EXHIBIT A

CONFIDENTIAL – REDACTED IN ENTIRETY

EXHIBIT B

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

| | | |
|-----------------------|---|-----------------|
| _____ |) | |
| In the Matter of |) | |
| |) | |
| Axon Enterprise, Inc. |) | |
| a corporation, |) | Docket No. 9389 |
| |) | |
| and |) | |
| |) | |
| Safariland, LLC, |) | |
| a partnership, |) | |
| |) | |
| Respondents. |) | |
| _____ |) | |

**ORDER ON RESPONDENT’S
MOTION FOR *IN CAMERA* TREATMENT**

I.

Pursuant to Rule 3.45(b) of the Rules of Practice of the Federal Trade Commission (“FTC” or “Commission”) and the Scheduling Order entered in this matter, Respondent Axon Enterprise, Inc. (“Respondent” or “Axon”) filed a motion for *in camera* treatment for materials that the parties have listed on their exhibit lists as materials that might be introduced at trial in this matter (“Motion”). Complaint Counsel filed an opposition to the motion (“Opposition”). For the reasons set forth below, Respondent’s motion is GRANTED in part and DENIED WITHOUT PREJUDICE in part.

II.

Under Rule 3.45(b), the Administrative Law Judge may order that material offered into evidence “be placed *in camera* only [a] after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment or [b] after finding that the material constitutes sensitive personal information.” 16 C.F.R. § 3.45(b).

A. Clearly defined, serious injury

“[R]equests for *in camera* treatment must show ‘that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved.’” *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984), quoting *In re H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1961 FTC LEXIS 368 (Mar. 14, 1961). Applicants must “make a clear showing that the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 1980 FTC LEXIS 99, at *10 (Mar. 10, 1980). If the applicants for *in camera* treatment make this showing, the importance of the information in explaining the rationale of FTC decisions is “the principal countervailing consideration weighing in favor of disclosure.” *Id.*

The Federal Trade Commission recognizes the “substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.” *Hood*, 1961 FTC LEXIS 368, at *5-6. A full and open record of the adjudicative proceedings promotes public understanding of decisions at the Commission. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 458 (1977). A full and open record also provides guidance to persons affected by its actions and helps to deter potential violators of the laws the Commission enforces. *Hood*, 58 F.T.C. at 1186. The burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Id.* at 1188. Moreover, there is a presumption that *in camera* treatment will not be accorded to information that is more than three years old. *In re Int’l Ass’n of Conference Interpreters*, 1996 FTC LEXIS 298, at *15 (June 26, 1996) (citing *General Foods*, 95 F.T.C. at 353; *Crown Cork*, 71 F.T.C. at 1715).

In order to sustain the burden for withholding documents from the public record, an affidavit or declaration is always required, demonstrating that a document is sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109, at *2-3 (Apr. 23, 2004). To overcome the presumption that *in camera* treatment will not be granted for information that is more than three years old, applicants seeking *in camera* treatment for such documents must also demonstrate, by affidavit or declaration, that such material remains competitively sensitive. In addition, to properly evaluate requests for *in camera* treatment, applicants must provide a copy of the documents at issue to the Administrative Law Judge for review. Where *in camera* treatment is sought for transcripts of investigational hearings or depositions, the requests shall be made only for those specific pages and line numbers of transcripts that contain information that meets the *in camera* standard. *In re Unocal*, 2004 FTC LEXIS 197, *4-5 (Oct. 7, 2004).

Under Commission Rule 3.45(b)(3), indefinite *in camera* treatment is warranted only “in unusual circumstances,” including circumstances in which “the need for confidentiality of the material . . . is not likely to decrease over time. . . .” 16 C.F.R. § 3.45(b)(3). “Applicants seeking indefinite *in camera* treatment must further demonstrate ‘at the outset that the need for confidentiality of the material is not likely to decrease over time’ 54 Fed. Reg. 49,279 (1989) . . .

[and] that the circumstances which presently give rise to this injury are likely to be forever present so as to warrant the issuance of an indefinite *in camera* order rather than one of more limited duration.” *In re E. I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, at *2-3 (Apr. 25, 1990). In *DuPont*, the Commission rejected the respondent’s request for indefinite *in camera* treatment. However, based on “the highly unusual level of detailed cost data contained in these specific trial exhibit pages, the existence of extrapolation techniques of known precision in an environment of relative economic stability, and the limited amount of technological innovation occurring in the . . . industry,” the Commission extended the duration of the *in camera* treatment for a period of ten years. *Id.* at *5-6.

In determining the length of time for which *in camera* treatment is appropriate, the distinction between trade secrets and ordinary business records is important because ordinary business records are granted less protection than trade secrets. *Hood*, 58 F.T.C. at 1189. Examples of trade secrets meriting indefinite *in camera* treatment include secret formulas, processes, other secret technical information, or information that is privileged. *Hood*, 58 F.T.C. at 1189; *General Foods*, 95 F.T.C. at 352; *In re Textron, Inc.*, 1991 FTC LEXIS 135, at *1 (Apr. 26, 1991).

In contrast to trade secrets, ordinary business records include information such as customer names, pricing to customers, business costs and profits, as well as business plans, marketing plans, or sales documents. *See Hood*, 1961 FTC LEXIS 368, at *13; *In re McWane, Inc.*, 2012 FTC LEXIS 143 (Aug. 17, 2012); *In re Int’l Ass’n of Conference Interpreters*, 1996 FTC LEXIS 298, at *13-14. When *in camera* treatment is granted for ordinary business records, it is typically provided for two to five years. *E.g., McWane, Inc.*, 2012 FTC LEXIS 143; *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101 (May 25, 2011).

In addition, Respondent’s motion is evaluated by the standards applied in *In re Otto Bock Healthcare N. Am.*, 2018 WL 3491602, at *1 (July 2, 2018).

B. Sensitive personal information

Under Rule 3.45(b) of the Rules of Practice, after finding that material constitutes “sensitive personal information,” the Administrative Law Judge shall order that such material be placed *in camera*. 16 C.F.R. § 3.45(b). “Sensitive personal information” is defined as including, but not limited to, “an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records.” 16 C.F.R. § 3.45(b). In addition to these listed categories of information, in some circumstances, individuals’ names and addresses, and witness telephone numbers have been found to be “sensitive personal information” and accorded *in camera* treatment. *In re LabMD, Inc.*, 2014 FTC LEXIS 127 (May 6, 2014); *In re McWane, Inc.*, 2012 FTC LEXIS 156 (Sept. 17, 2012). *See also In re Basic Research, LLC*, 2006 FTC LEXIS 14, at *5-6 (Jan. 25, 2006) (permitting the redaction of information concerning particular consumers’ names or other personal data when it

was not relevant). “[S]ensitive personal information . . . shall be accorded permanent *in camera* treatment unless disclosure or an expiration date is required or provided by law.” 16 C.F.R. § 3.45(b)(3).

III.

Respondent’s motion seeks *in camera* treatment for 659 identified trial exhibits, which include documents and testimony that, according to Respondent, fall into five categories: (1) internal pricing information, (2) internal financial and business planning, (3) business strategy information, (4) product security information, and (5) personal information. The large number of documents that Respondent seeks to protect exceeds that which would reasonably be expected to be entitled to the protection contemplated by Rule 3.45. This casts doubt on the claim that all the documents are in fact entitled to such protection. Furthermore, the declaration from Axon’s general counsel offered by Respondent to support its claim provides only general and conclusory justifications.

A review of a sampling of documents reveals that, for many documents, Respondent’s assertion that it would suffer serious competitive harm if the documents were publicly disclosed is unsupported and unpersuasive. For example, Respondent seeks *in camera* treatment for exhibits consisting of board meetings and updates from 2016 that detail plans for 2016 and into 2017, but do not appear to involve plans beyond 2017. Respondent fails to explain why this information is still competitively sensitive. Several pages of one of these exhibits involve details about Axon’s name change, which has already taken place. Some of the information contained therein is already public, such as lists of police departments that are using body worn camera systems. As another example, Respondent seeks *in camera* treatment for a chat transcript from 2015 that discusses an acquisition made by Axon in 2015. It is unclear why this information remains competitively sensitive.

Furthermore, many of the documents for which Respondent seeks *in camera* treatment are over three years old. There is a presumption that *in camera* treatment will not be accorded to information that is more than three years old unless the movant’s supporting declaration shows that such material remains competitively sensitive. Respondent’s supporting declaration fails to provide the necessary justification for granting *in camera* treatment to these documents.

In addition, Respondent seeks *in camera* treatment for a period of ten years for all of the documents at issue. Respondent has made no representations that the documents reveal trade secrets or highly detailed cost data, and are thus the types of documents that warrant ten-year protection, nor otherwise justified its request for an extended duration of *in camera* treatment for all of the documents. Documents reflecting business plans and strategies, contracts and negotiations with customers, customer specific information, market and competitive analyses, and sales and financial information are ordinary business records and generally are not entitled to an extended period of *in camera* treatment.

The following documents are less than one year old and appear to be competitively sensitive. Therefore, *in camera* treatment, for a period of five years, to expire October 1, 2025, is GRANTED for the documents identified as: RX000290, RX000291, RX000300, RX000305,

RX000432, RX000444, RX000464/PX11457, PX10141, PX10402, PX10404, PX10450, PX10459, PX10492, PX10502, PX10511, PX10617, PX10638, PX10642, PX10652, PX10654, PX10666, PX10667, PX10668, PX10670, PX10687, PX10690, PX10823, PX10825, PX10841, PX10847, PX10855, PX10858, PX10889, PX10900, PX10905, PX10908, PX10909, PX10910, PX10926, PX10939, PX10979, PX10981, PX11138, PX11181, PX11354, PX11389, RX000464/PX11457, PX11458, PX11524, PX11533, PX11682, PX11720, PX11721, PX11722, PX11723, PX11724, PX11745, PX11779, PX11791, PX11792, PX11796, PX11797, PX11798, and PX20311.

With respect to transcripts of investigational hearings and deposition testimony, requests for *in camera* treatment shall be made only for those specific pages and line numbers of transcripts that contain information that meets the *in camera* standard. *In re Unocal*, 2004 FTC LEXIS 197, *4-5 (Oct. 7, 2004). Respondent has properly tailored its request to cover only those portions of the transcripts that contain competitively sensitive information. *In camera* treatment, for a period of five years, to expire October 1, 2025, is GRANTED for the following:

- RX000433: 67:6-:21; 69:18-70:12; 88:23-93:8; 96:6-19; 104:8-22; 109:3-110:7; 111:9-20; 129:20-130:9; 132:11-133:24; 136:2-141:6; 184:3-186:7;
- RX000434: 46:14-48:14; 72:10-22; 87:19-94:6; 94:21-97:20; 112:9-12; 123:16-124:4; 129:1-23; 140:7-141:14; 151:5-153:15; 162:8-163:2; 173:13-14; 181:13-184:13; 188:4-191:12;
- RX000849/PX80001: 34:5-35:4; 42:20-23; 142:15-143:16; 144:2-146:7; 151:20-158:12;
- RX000850/PX80002: 37:2-5; 68:13-74:13; 79:4-7; 79:25; 154:2-156:19; 158:2-12;
- RX000851/PX80003: 67:6-21; 69:18-70:12; 88:23-93:8; 96:6-19; 104:8-22; 109:3-110:7; 111:9-111:20; 129:20-130:9; 132:11-133:24; 136:2-141:6; 184:3-186:7;
- RX000852/PX80004: 46:14-48:14; 72:10-72:22; 87:19-94:6; 94:21-97:20; 112:9-12; 123:16-124:4; 129:1-23; 140:7-141:14; 151:5-153:15; 162:8-163:2; 173:13-14; 181:13-184:13; 188:4-191:12;
- RX000862/PX81007: 30:2-31:19; 94:22-95:19; 140:9-143:11; 148:13-149:7; 193:7-195:22; 197:3-198:12; 222:20-226:5;
- RX000863/PX81008: 13:13-14:19; 48:18-51:3; 23:16-24:15; 29:17-31:21; 51:12-52:11;
- RX000866/PX81011: 180:7-184:17; 205:5; 207:1;
- RX000879/PX81024: 26:15-29:11;
- RX000883/PX81028: 23:20-27:4; 224:20-238:19;
- RX000888/PX81033: 52:10-54:14;
- RX000890/PX81035: 120:12-16; 137:5-138:9; 140:5-25; 141:15-25; 142:1-4; 143:22-25; 144:1-25; 158:2; 179:3-6, 19; 180:9; 187:19-25; 188:9-12; 189:5-15; 190:1-191:10; 196:9-14; 197:16-199:18;
- RX000891/PX81036: 35:1-36:8; 39:15-42:18;
- RX000895/PX81040: 104:24-25; 199:24-200:9; 216:10-231:2; 231:19-240:23; 247:3-8;
- RX000899/PX81044: 114:20-23; 115:19-25; 116:1-9; 160:16-25; 168:1-21; 214:16-18;
- RX000903/PX81048: 155:9-159:12; 162:12-164:9; 245:24-251:24; 257:6-262:4;
- RX000906/PX81051: 16:24-17:21; 27:1-29:2; 73:11-75:9; 81:11-84:21; 184:22-185:13;
- RX000910/PX81060: 82:22-83:8; 87:5-90:3; 100:10-16; 153:7-13; 154:14-163:11; 164:13-169:6; 177:17-178:24; 190:17-191:5.

One of the categories for which Respondent seeks *in camera* treatment is “personal information.” In support of Respondent’s request for *in camera* treatment for documents in this category, the declaration states: “certain documents reflect compensation, including bonus metrics, salaries, and stock options Other documents in this category include personal performance evaluations” Sensitive personal information includes personal financial information and employment arrangements. *In re Otto Bock Healthcare N. Am., Inc.*, 2018 FTC LEXIS 111, *16-17 (F.T.C. July 6, 2018). “[S]ensitive personal information . . . shall be accorded permanent *in camera* treatment unless disclosure or an expiration date is required or provided by law.” 16 C.F.R. § 3.45(b)(3).

Therefore, permanent *in camera* treatment is GRANTED for the following documents containing sensitive personal information: PX10052, PX10084, PX10128, PX10140, PX10187, PX10196, PX10730, PX10915, PX11125, PX11172, PX11229, PX11385, PX11444, PX11466, PX11506, PX11518, PX11529, PX11733, PX11744, and PX20167.

IV.

For all other documents, Respondent’s Motion is DENIED WITHOUT PREJUDICE, and it is hereby ORDERED that Respondent shall have until October 9, 2020 to refile a motion for *in camera* treatment. In advance of filing any such motion, Respondent shall carefully and thoroughly review all documents for which it seeks *in camera* treatment and narrow its requests to only those documents that comply with the Commission’s strict standards for *in camera* treatment and provide a declaration or affidavit that provides sufficient support for any requests. Complaint Counsel shall have until October 14, 2020 to file any opposition. In the event that either party wishes to introduce any document at trial that is the subject of a then-pending motion for *in camera* treatment, provisional *in camera* treatment may be granted until such time as a subsequent order is issued. *See* 16 C.F.R. § 3.45(g).

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: October 2, 2020

EXHIBIT C

CONFIDENTIAL – REDACTED IN ENTIRETY

EXHIBIT D

CONFIDENTIAL – REDACTED IN ENTIRETY

EXHIBIT E

CONFIDENTIAL – REDACTED IN ENTIRETY

EXHIBIT F

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EXHIBIT G

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EXHIBIT H

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EXHIBIT I

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EXHIBIT J

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EXHIBIT K

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2021, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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I also certify that I delivered via electronic mail a copy of the foregoing document to:

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CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

May 17, 2021

By: s/ Nicole Lindquist
Nicole Lindquist, Attorney